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TITLE 10--ARMED FORCES

Subtitle A--General Military Law

PART IV--SERVICE, SUPPLY, AND PROCUREMENT

CHAPTER 139--RESEARCH AND DEVELOPMENT

Sec. 2371. Research projects: transactions other than contracts  
and grants

(a) Additional Forms of Transactions Authorized.--The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) under the authority of this subsection in carrying out basic, applied, and advanced research projects. The authority under this subsection is in addition to the authority provided in section 2358 of this title to use contracts, cooperative agreements, and grants in carrying out such projects.

(b) Exercise of Authority by Secretary of Defense.--In any exercise of the authority in subsection (a), the Secretary of Defense shall act through the Defense Advanced Research Projects Agency or any other element of the Department of Defense that the Secretary may designate.

(c) Advance Payments.--The authority provided under subsection (a) may be exercised without regard to section 3324 of title 31.

(d) Recovery of Funds.--(1) A cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title and a transaction authorized by subsection (a) may include a clause that requires a person or other entity to make payments to the Department of Defense or any other department or agency of the Federal Government as a condition for receiving support under the agreement or other transaction.

(2) The amount of any payment received by the Federal Government pursuant to a requirement imposed under paragraph (1) may be credited, to the extent authorized by the Secretary of Defense, to the appropriate account established under subsection (f). Amounts so credited shall be merged with other funds in the account and shall be available for the same purposes and the same period for which other funds in such account are available.

(e) Conditions.--(1) The Secretary of Defense shall ensure that--

(A) to the maximum extent practicable, no cooperative agreement containing a clause under subsection (d) and no transaction entered into under subsection (a) provides for research that duplicates research being conducted under existing programs carried out by the Department of Defense; and

(B) to the extent that the Secretary determines practicable, the funds provided by the Government under a cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) do not exceed the total amount provided by other parties to the cooperative agreement or other transaction.

(2) A cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) may be used for a research project when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.

(f) Support Accounts.--There is hereby established on the books of

the Treasury separate accounts for each of the military departments and the Defense Advanced Research Projects Agency for support of research projects and development projects provided for in cooperative agreements containing a clause under subsection (d) and research projects provided for in transactions entered into under subsection (a). Funds in those accounts shall be available for the payment of such support.

(g) Regulations.--The Secretary of Defense shall prescribe regulations to carry out this section.

(h) Annual Report.--(1) Not later than 90 days after the end of each fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the use by the Department of Defense during such fiscal year of--

(A) cooperative agreements authorized under section 2358 of this title that contain a clause under subsection (d); and

(B) transactions authorized by subsection (a).

(2) The report shall include, with respect to the cooperative agreements and other transactions covered by the report, the following:

(A) The technology areas in which research projects were conducted under such agreements or other transactions.

(B) The extent of the cost-sharing among Federal Government and non-Federal sources.

(C) The extent to which the use of the cooperative agreements and other transactions--

(i) has contributed to a broadening of the technology and industrial base available for meeting Department of Defense needs; and

(ii) has fostered within the technology and industrial base new relationships and practices that support the national security of the United States.

(D) The total amount of payments, if any, that were received by the Federal Government during the fiscal year covered by the report pursuant to a clause described in subsection (d) that was included in the cooperative agreements and other transactions, and the amount of such payments, if any, that were credited to each account established under subsection (f).

(i) Protection of Certain Information From Disclosure.--(1) Disclosure of information described in paragraph (2) is not required, and may not be compelled, under section 552 of title 5 for five years after the date on which the information is received by the Department of Defense.

(2)(A) Paragraph (1) applies to information described in subparagraph (B) that is in the records of the Department of Defense if the information was submitted to the Department in a competitive or noncompetitive process having the potential for resulting in an award, to the party submitting the information, of a cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title or another transaction authorized by subsection (a).

(B) The information referred to in subparagraph (A) is the following:

(i) A proposal, proposal abstract, and supporting documents.

(ii) A business plan submitted on a confidential basis.

(iii) Technical information submitted on a confidential basis.

(Added Pub. L. 101-189, div. A, title II, Sec. 251(a)(1), Nov. 29, 1989, 103 Stat. 1403; amended Pub. L. 101-510, div. A, title XIV, Sec. 1484(k)(9), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102-190, div. A, title VIII, Sec. 826, Dec. 5, 1991, 105 Stat. 1442; Pub. L. 102-484, div. A, title II, Sec. 217, Oct. 23, 1992, 106 Stat. 2352; Pub. L. 103-35, title II, Sec. 201(c)(4), May 31, 1993, 107 Stat. 98; Pub. L. 103-

160, div. A, title VIII, Sec. 827(b), title XI, Sec. 1182(a)(6), Nov. 30, 1993, 107 Stat. 1712, 1771; Pub. L. 103-355, title I, Sec. 1301(b), Oct. 13, 1994, 108 Stat. 3285; Pub. L. 104-106, div. A, title XV, Sec. 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 104-201, div. A, title II, Sec. 267(a)-(c)(1)(A), title X, Sec. 1073(e)(1)(B), Sept. 23, 1996, 110 Stat. 2467, 2468, 2658; Pub. L. 105-85, div. A, title VIII, Sec. 832, Nov. 18, 1997, 111 Stat. 1842; Pub. L. 105-261, div. A, title VIII, Sec. 817, Oct. 17, 1998, 112 Stat. 2089; Pub. L. 106-65, div. A, title X, Sec. 1067(1), Oct. 5, 1999, 113 Stat. 774.)

#### Amendments

1999--Subsec. (h)(1). Pub. L. 106-65 substituted ``and the Committee on Armed Services'' for ``and the Committee on National Security'' in introductory provisions.

1998--Subsec. (i)(2)(A). Pub. L. 105-261 substituted ``cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title'' for ``cooperative agreement that includes a clause described in subsection (d)''.

1997--Subsec. (i). Pub. L. 105-85 added subsec. (i).

1996--Subsec. (b). Pub. L. 104-201, Sec. 1073(e)(1)(B), inserted ``Defense'' before ``Advanced Research Projects Agency''.

Subsec. (e). Pub. L. 104-201, Sec. 267(a), inserted ``(1)'' before ``The Secretary of Defense'', redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, inserted ``and'' after semicolon at end of subpar. (A), substituted a period for ``; and'' at end of subpar. (B), added par. (2), and struck out par. (3) which read as follows: ``a cooperative agreement containing a clause under subsection (d) or a transaction authorized under subsection (a) is used for a research project only when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.''

Subsec. (f). Pub. L. 104-201, Sec. 1073(e)(1)(B), inserted ``Defense'' before ``Advanced Research Projects Agency''.

Subsec. (h). Pub. L. 104-201, Sec. 267(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ``Not later than 60 days after the end of each fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on all cooperative agreements entered into under section 2358 of this title during such fiscal year that contain a clause authorized by subsection (d) and on all transactions entered into under subsection (a) during such fiscal year. The report shall contain, with respect to each such cooperative agreement and transaction, the following:

``(1) A general description of the cooperative agreement or other transaction (as the case may be), including the technologies for which research is provided for under such agreement or transaction.

``(2) The potential military and, if any, commercial utility of such technologies.

``(3) The reasons for not using a contract or grant to provide support for such research.

``(4) The amount of the payments, if any, that were received by the Federal Government during the fiscal year covered by the report pursuant to a clause included in such cooperative agreement or other transaction pursuant to subsection (d).

``(5) The amount of the payments reported under paragraph (4), if any, that were credited to each account established under subsection (f).''

Pub. L. 104-106 substituted ``Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ``Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (i). Pub. L. 104-201, Sec. 1073(e)(1)(B), which directed amendment of subsec. (i) by inserting ``Defense'' before ``Advanced Research Projects Agency'', could not be executed because of the renumbering of subsec. (i) as section 2371a of this title by Pub. L. 104-201, Sec. 267(c)(1)(A). See below.

Pub. L. 104-201, Sec. 267(c)(1)(A), renumbered subsec. (i) of this section as section 2371a of this title.

1994--Pub. L. 103-355 amended section generally. Prior to amendment section related to cooperative agreements and other transactions for advanced research projects.

1993--Subsec. (a). Pub. L. 103-160, Sec. 827(b)(1)(C), substituted ``section 2358 of this title'' for ``subsection (a)'' in par. (1) and ``subsection (d)'' for ``subsection (e)'' in par. (2).

Pub. L. 103-160, Sec. 827(b)(1)(A), (B), redesignated subsec. (b) as (a) and struck out former subsec. (a), as amended by Pub. L. 103-160, Sec. 1182(a)(6), (h), which read as follows: ``The Secretary of Defense, in carrying out advanced research projects through the Advanced Research Projects Agency, and the Secretary of each military department, in carrying out advanced research projects, may enter into cooperative agreements and other transactions with any person, any agency or instrumentality of the United States, any unit of State or local government, any educational institution, and any other entity.''

Pub. L. 103-160, Sec. 1182(a)(6), substituted ``Advanced Research Projects Agency'' for ``Defense Advanced Research Projects Agency''.

Subsec. (b). Pub. L. 103-160, Sec. 827(b)(1)(B), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 103-160, Sec. 827(b)(1)(B), (2)(A), redesignated subsec. (d) as (c) and inserted ``and development'' after ``research'' in two places in par. (1). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 103-160, Sec. 827(b)(1)(B), (D), (2)(B), redesignated subsec. (e), as amended by Pub. L. 103-160, Sec. 1182(a)(6), (h), as (d) and substituted ``section 2358 of this title'' for ``subsection (a)'' and ``research and development'' for ``advanced research''. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 103-160, Sec. 827(b)(1)(B), (E), (2)(B), (C), redesignated subsec. (f) as (e), in par. (1) substituted ``research and development are'' for ``advanced research is'', in par. (3) substituted ``research and development'' for ``advanced research'', in par. (4) substituted ``subsection (a)'' for ``subsection (b)'' and in par. (5) substituted ``subsection (d)'' for ``subsection (e)''.

Former subsec. (e) redesignated (d).

Pub. L. 103-160, Sec. 1182(a)(6), substituted ``Advanced Research Projects Agency'' for ``Defense Advanced Research Projects Agency''.

Subsec. (f). Pub. L. 103-160, Sec. 827(b)(1)(B), redesignated subsec. (g), as amended by Pub. L. 103-160, Sec. 1182(a)(6), (h), as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 103-160, Sec. 827(b)(1)(B), redesignated subsec. (g), as amended by Pub. L. 103-160, Sec. 1182(a)(6), (h), as (f).

Pub. L. 103-160, Sec. 1182(a)(6), substituted ``Advanced Research Projects Agency'' for ``Defense Advanced Research Projects Agency''.

Pub. L. 103-35 substituted ``granted by section 12'' for ``granted by section 11'' and ``provisions of sections 11 and 12'' for ``provisions of sections 10 and 11''.

1992--Subsec. (g). Pub. L. 102-484 added subsec. (g).

1991--Subsec. (a). Pub. L. 102-190, Sec. 826(a), inserted ``and the Secretary of each military department, in carrying out advanced research projects,''. Subsec. (b)(1). Pub. L. 102-190, Sec. 826(b)(1)(A), struck out ``by the Secretary'' after ``transactions entered into''.

Subsec. (b)(2). Pub. L. 102-190, Sec. 826(b)(1)(B), substituted ``to the appropriate account'' for ``to the account''.

Subsec. (d). Pub. L. 102-190, Sec. 826(b)(2), substituted ``The

Secretary of Defense'' for ``The Secretary'' in introductory provisions.

Subsec. (e). Pub. L. 102-190, Sec. 826(b)(3), substituted ``separate accounts for each of the military departments and the Defense Advanced Research Projects Agency'' for ``an account'' and ``those accounts'' for ``such account''.

Subsec. (f)(5). Pub. L. 102-190, Sec. 826(b)(4), substituted ``each account'' for ``the account''.

Subsec. (g). Pub. L. 102-190, Sec. 826(c), struck out subsec. (g) which read as follows: ``The authority of the Secretary to enter into cooperative agreements and other transactions under this section expires at the close of September 30, 1991.''

1990--Subsec. (f). Pub. L. 101-510 substituted ``Committees on'' for ``Committees of'' in introductory provisions.

#### Effective Date of 1994 Amendment

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of Title 41, Public Contracts.

#### Authority of Defense Advanced Research Projects Agency To Carry Out Certain Prototype Projects

Section 845 of Pub. L. 103-160, as amended by Pub. L. 104-201, div. A, title VIII, Sec. 804, title X, Sec. 1073(e)(1)(D), (2)(A), Sept. 23, 1996, 110 Stat. 2605, 2658; Pub. L. 105-261, div. A, title II, Sec. 241, Oct. 17, 1998, 112 Stat. 1954; Pub. L. 106-65, div. A, title VIII, Sec. 801, title X, Sec. 1066(d)(6), Oct. 5, 1999, 113 Stat. 700, 773, provided that:

``(a) Authority.--The Director of the Defense Advanced Research Projects Agency, the Secretary of a military department, or any other official designated by the Secretary of Defense may, under the authority of section 2371 of title 10, United States Code, carry out prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense.

``(b) Exercise of Authority.--(1) Subsections (e)(1)(B) and (e)(2) of such section 2371 shall not apply to projects carried out under subsection (a).

``(2) To the maximum extent practicable, competitive procedures shall be used when entering into agreements to carry out projects under subsection (a).

``(c) Comptroller General Review.--(1) Each agreement entered into by an official referred to in subsection (a) to carry out a project under that subsection that provides for payments in a total amount in excess of \$5,000,000 shall include a clause that provides for the Comptroller General, in the discretion of the Comptroller General, to examine the records of any party to the agreement or any entity that participates in the performance of the agreement.

``(2) The requirement in paragraph (1) shall not apply with respect to a party or entity, or a subordinate element of a party or entity, that has not entered into any other agreement that provides for audit access by a Government entity in the year prior to the date of the agreement.

``(3) The head of the contracting activity that is carrying out the agreement may waive the applicability of the requirement in paragraph (1) to the agreement if the head of the contracting activity determines that it would not be in the public interest to apply the requirement to the agreement. The waiver shall be effective with respect to the agreement only if the head of the contracting activity transmits a notification of the waiver to Congress and the Comptroller General before entering into the agreement. The notification shall include the rationale for the determination.

``(4) The Comptroller General may not examine records pursuant to a clause included in an agreement under paragraph (1) more than three years after the final payment is made by the United States under the agreement.

``(d) Period of Authority.--The authority to carry out projects under subsection (a) shall terminate at the end of September 30, 2001.''

#### Section Referred to in Other Sections

This section is referred to in sections 2358, 2511, 2519 of this title; title 49 section 5506.